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Patient Care Ombudsman, pro hac vice

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:

REMARKABLE HEATHCARE OF CARROLLTON LP;
EIN: 5960

REMARKABLE HEALTHCARE OF DALLAS, LP;
EIN: 3418

REMARKABLE HEALTHCARE OF FORT WORTH, LP;
EIN: 1692

REMARKABLE HEALTHCARE OF SEGUIN, LP;
EIN: 4566

REMARKABLE HEALTHCARE, LLC,
EIN: 5142

DEBTORS.

Jointly Administered Under
Case No: 23-42098-btr
Chapter 11

**PATIENT CARE OMBUDSMAN FIRST REPORT
Fort Worth Location**

Pursuant to 11 U.S.C. § 333 of the United States Bankruptcy Code (the “Code”) and the court’s December 5, 2023, *Order Granting United States Trustee’s Unopposed Motion for Order Directing Appointment of Patient Care Ombudsman* (the “**Appointment Order**”) [Docket No. 57], Susan N. Goodman was appointed to serve as the Patient Care Ombudsman (“**PCO**”) for each of the four healthcare facility Debtors in these jointly administered cases.¹

¹ The *Notice of Appointment of Patient Care Ombudsman* (the “**Appointment Notice**”) [Docket No. 58] was filed with the court the same date of the Appointment Order.

In the *United States Trustee's Unopposed Motion for Order Directing the Appointment of Patient Care Ombudsman* (the “**Appointment Motion**”) [Docket No. 44], PCO was directed to monitor the care provided to patients/residents of the Debtors and report to the court no later than thirty (30) days after the lodging of the Appointment Order. The Appointment Notice included PCO’s curriculum vitae and other supporting documentation to support her competence to serve as the PCO. These pleadings are incorporated by reference herein. Of note, while PCO’s site visit is guided by the regulations/tools utilized by certifying agencies and auditors, PCO does not certify the Debtors’ compliance with any state or federal licensure standards.

Shortly after the lodging of the Appointment Order and Appointment Notice, PCO engaged in initial site visits at each of the four Debtors’ locations. Because PCO’s report is available upon request to facility staff, residents, and family members, PCO will file reports individually for each of Debtors’ locations. PCO comes now and files her first report for the Remarkable Healthcare of Fort Worth, LLP location (“**Debtor**” or “**Fort Worth**”).

SUMMARY

Fort Worth is one of three locations that share the same basic floor plan. Like the Prestonwood location, Fort Worth has 120 licensed beds. At the time of PCO’s site visits, Fort Worth was the location with the highest census at eighty (80).

Leadership. At the time of PCO’s site visit, the Administrator/CEO (“**CEO**”) was absent from the facility. PCO’s senior leadership interaction was with the Executive Director (“**ED**”), who is related to the Debtors’ owners. (Collectively, the CEO and ED are referenced as “**Leadership**.”) Fort Worth was the only location with the ED role. The ED reported his engagement at the facility was grounded in his desire to assist with heightening the facility’s performance.

Clinical staffing. At the time of PCO’s site visit, the assistant director of nursing (“**ADON**”) role was vacant. The previous ADON remained at the Fort Worth location, moving back into a staff nurse role. She was off on the date of PCO’s site visit. The Director of Nursing (“**DON**”) had been in her role for approximately six months. Because the Fort Worth location was designated by the Centers for Medicare and Medicaid Services (“**CMS**”) as a Special Focus Facility

(“SFF”)², it has a biannual survey schedule. At the time of PCO’s site visit, Fort Worth was working on their survey plan-of-correction/response to their early-November 2023 survey, including filing for Informal Dispute Resolution (“IDR”) review of adverse survey findings that included the imposition of fines (called civil money penalties or “CMPs”).³

Consistent with Debtors’ other facilities, the largest reported DON challenge was clinical staffing coverage. The facility generally had two types of clinical staffing for the nursing and medication aid roles: (1) Monday through Friday coverage across three, eight-hour shifts, and (2) “Double Weekend” coverage where staff were hired to work 16-hour shifts on Saturday and Sunday to essentially earn full-time pay for weekend-only work. Certified nursing assistant (“CNA”) staff worked eight-hour shifts. At the time of PCO’s site visit, the morning shift was below matrix by one CNA on each hall. With the assumption that staffing to matrix would be the best staffing, PCO inquired as to the tightest or most difficult actual staffing in the last 30 days. Similar with feedback at other locations, hall coverage with two team members (a nurse and someone filling the CNA role) was reported.

Because Debtors are not contracted with staffing agencies, staffing gap coverage could include licensed nurses, management, or some other professional working in the CNA role. For those with no competency to support direct patient care activities, additional team members were reported as coming in for limited time periods to assist with trash collection and laundry, particularly on weekends because this location does not have scheduled housekeeping or laundry staffing for weekends. The DON understandably reported that, when staffing was strained, the limited staff providing coverage focused their task prioritization on medication administration, incontinence care, and meals assistance.

² CMS established its’ SFF Initiative “to improve care in the poorest performing nursing homes.” *See* <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000757.asp>. CMS requires increased survey frequency (double the rate of non-SFF locations) with the goal that within approximately 18-24 months the special focus facility would (1) improve and graduate off the SFF list (2) be terminated from the Medicare program, or (3) show enough improvement that the facility should be afforded additional time to improve. Generally, each state will have approximately two facilities that are officially designated as SFF. Texas, however, because of its size, has more. Fort Worth has been categorized as a SFF since early 2023.

³ The ED reported feeling confident that the two, “K-level” deficiencies from the November survey would be reversed through the IDR process.

After PCO's completion of her initial site visit, the DON reported resigning effective December 18, 2023. While the report, in its entirety, was not completed until after the DON's departure, PCO completed the clinical portion of the report in advance of the DON's last day to allow for review and confirmation of the accuracy of clinical portion of the report relative to PCO's site visit, particularly since no other nursing leadership interacted with PCO.

In contrast, Leadership reported that their "clinical roster" of nurses, medication aids, and CNAs was full. Leadership attributed clinical staffing challenges to staff performance challenges with workers "calling off" or simply "no showing" for a scheduled shift. Further, at the time of report filing, Leadership indicated that the former ADON was reinstated in her previously vacated leadership role, with another former ADON expected to return to Fort Worth on January 20, 2023, as a second ADON. With these two licensed vocational nurses ("LVNs") in ADON roles, the DON role will be filled on an interim basis by the regional nurse who is also covering DON duties at Prestonwood through most of January 2024.

The wound nurse denied supply concerns post-petition. Prescription medication availability was also reported as continuing. However, "over the counter" items (this would include things like Benadryl and Tylenol, for example) were described as tight.

Plant Operations, Laundry, Housekeeping. The Plant Operations Director is a District Director over this and the other Dallas-area locations ("PODD"). He is also related to the Debtors' owners. The PODD provided PCO copies of the November 8, 2023, life safety code ("LSC") survey deficiencies. LSC surveys are focused on fire hazards and safety in case of fire. In the most recent survey, Fort Worth was cited with five different deficiencies.⁴ Deficiencies associated with fire drills, smoking regulations, and electrical system maintenance and testing were noted. In follow-

⁴ Survey deficiencies for LSC and clinical services surveys are assigned a letter code between A and L. The deficiency letter assignment is based on the severity of harm associated with the deficiency (ranging from no harm to immediate jeopardy to resident health or safety) and the number of residents potentially or actually affected by the deficiency (called "scope"). Tags classified as A, B, and C mean the facility remains in substantial compliance with licensure requirements, posing no greater risk than the potential for minimal harm. On the other end of the spectrum, tags J, K, and L are deemed to pose immediate jeopardy to resident health and safety, requiring immediate resolution and CMP accumulation until a plan of removal is accepted. A visual aid of deficiency categorization is attached herein as an exhibit.

up to some of the LSC survey findings, PCO noted the presence of a fire systems vendor on site testing the fire alarm system during her site visit.

Consistent with challenges noted at other locations, the PODD reported the building management software previously utilized was no longer available, moving the building maintenance to a manual system. Delay of some preventative maintenance items, limited supply of items such as air filters, and some accumulation relative to equipment (including call light) repairs were noted. The interruption in trash collection services was resolved by the time of PCO's site visit, although PCO encouraged PODD to remove all remaining waste from the abandoned roll-off to reduce fly accumulation and avoid attracting vermin. In advance of this report filing, Leadership indicated that this task had been completed.

Housekeeping services were covered by three team members, with Leadership reported adding additional housekeeping staff in advance of report filing. The staff reported some improvement in availability of garbage bags, paper towels, and toilet paper compared to pre-petition outages, yet continued to report running out items such that coverage was accomplished by moving around the remaining limited supply of paper products from room to room. Further, some personal purchasing of items, much less so post-petition, was reported. PCO did personally experience the unavailability of paper towels after hand washing in this and other Remarkable location restrooms.

The ED confirmed that shredding and hazardous waste removal vendors remained in place. Because hazardous waste is typically placed in a red bin or box, it is commonly called "red box waste." PCO noted an accumulation of red box waste for pickup in the dirty utility room. Following PCO's site visit, however, the CEO confirmed the vendor removed twenty-three boxes of red box waste.

Dietary. The Fort Worth dietary staffing appeared to be the most robust across Debtors' four locations. PCO noted complete, regular tracking on the various temperature logs that are required in this area. Consistent with the other locations, dry stock food supplies appeared modest, yet the Dietary Manager reported believing he had three-days' worth of emergency food if needed. PCO noted that the location did not have any emergency water, with the ED reporting that it was

used recently and had not yet been replaced. The Dietary Manager was unaware of who the replacement dietician was, and did report being aware that the previous dietician departed pre-petition.

Activities. PCO met the departing Activities Director (“AD”) and the CNA who will move into the role as the Certified AD departs on maternity leave. The AD told PCO that she did not intend to return to the AD role. PCO asked the AD if her departure decision was related to the bankruptcy. She responded affirmatively citing payroll and insurance lapse concerns that have been previously reported along with her personal disagreement with Leadership’s response to the circumstances associated with the adverse survey findings.

ANALYSIS AND NEXT STEPS

While PCO did not note any immediate circumstances suggesting imminent negative post-petition bankruptcy impacts under 11 U.S.C. § 333(b), PCO also did not observe operational stability to a level that would support her limited engagement moving forward, particularly given the location’s continued SFF status and recent survey challenges. As stated in the other location reports, PCO has significant concern that her role will add undue administrative burden to an already challenged financial situation. PCO has been open regarding these concerns to Debtors’ counsel and the Subchapter V Trustee, hoping that her candor would facilitate productive discussions amongst the various constituencies that move in a direction that focuses financial resources on staffing, equipment repair, and similar needs to the benefit of residents.

DATED: January 4, 2024.

By: /s/ Susan N. Goodman, TX Bar 24117585

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Patient Care Ombudsman – admitted pro hac vice

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served through the court's electronic notification system as permitted by Appendix 5005 of the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Texas on the 4th of January 2024, with a copy for posting at the Debtor location. Further, a copy of the pleading filed at Docket No. 72 was mailed, USPS Regular Mail, to the following, top 30 creditors (combined) with the filing of the first location report.

Ability Network Inc
PO Box 856015
Minneapolis MN 55485

Abshire Dietary Consultants
P.O. Box 1635
El Campo TX 77437

AT&T MOBILITY (Account 877003191)
PO Box 6463
Carol Stream IL 60197-6463

Auto-Chlor
P.O. Box 669126
Dallas TX 75266

Biomedical Waste Solutions
PO Box 1147
Port Neches TX 77651

Blue Cross Blue Shield of Texas
P.O. Box 731428
Dallas TX 75373-1428

Care One Communications LLC
PO Box 153122
Dallas TX 75315

Carrington Coleman
901 Main Street
Dallas TX 75202

Center Point Energy
PO Box 4981
Houston TX 77210

City of Dallas
City Hall, 2D South
Dallas TX 75277

City of Fort Worth
818 Missouri Ave
Fort Worth TX 76104

City of Seguin
PO Box 591
Seguin TX 78156

Colleyville Lofts Ventures LLC - Attn
Acctg
1700 Pacific Ave, Ste 1650
Dallas TX 75201

Crown Shields Transport LLC
11617 Lake Front Dr
Frisco TX 75036

Dallas Life Support Systems Inc.
7440 Whitehall St.
Richland Hills TX 76118

Dearborn National
36788 Eagle Way
Chicago IL 60678

Diagnostex Consultants
8913 Mid Cities Blvd
North Richland Hills TX 76182

Direct Energy Business
P.O. Box 660749
Dallas TX 75266

Direct Supply, Inc.
Box 88201
Milwaukee WI 53288-0201

Exponent Technologies Inc
4970 Landmark Pl
Dallas TX 75254

Griffin Properties of Fort Smith
PO Box 2207
Fort Smith TX 72902

Guadalupe Regional Medical Ctr
1215 E Court St
Seguin TX 78155

IPFS Corporation
P.O. Box 100391
Pasadena CA 91189-0391

JJINEMT LLC
1741 Cross Creek Lane
Cleburne TX 76033

Kaliber Data Security & Compliance
50 Franklin Street
Boston MA 2110

Mas Vida Health Care Solutions
133 Nursery Ln
Fort Worth TX 76114

Medina Valley Security, Inc.
PO Box 1030
Lytle TX 78052

Medline Industries, Inc.
Dept 1080
Dallas TX 75312

Neighborhood Portable Xray and Lab
6901 Avenue K #109
Plano TX 75074

Netsmart Technologies, Inc.
PO Box 713519
Philadelphia PA 19171

New Benefits Ltd.
PO Box 803475
Dallas TX 75380

New Source Medical
9913 Shelbyville Rd
Louisville KY 40223

North Texas Fire Systems, LLC
PO Box 880
Sanger TX 76266

Optima Healthcare Solutions, LLC.
PO Box 72046
Cleveland OH 44192

Performance Foodservice
524 West 61st street
Shreveport LA 71106

Pharmacy Unlimited
PO Box 592602
San Antonio TX 78259

PointClick Care Technologies INC
PO BOX 674802
DETROIT MI 48267

Progressive Commercial
PO Box 650201
Dallas TX 75265

Simply Work
PO Box 2172
Neenah WI 54957

Southern Cross Ambulance
PO Box 311295
New Braunfels TX 78131

The PICC Team DFW
4500 Northside Dr.
Amarillo TX 79108

Trans-Care Medical Transport
PO Box 14274
Fort Worth TX 76117

WellSky Corporation
11300 Switzer Road
Overland Park KS 66210

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